APR 8 - 2010

No 09-807

IN THE

UNITED STATES SUPREME COURT

JAMES HENRY DENEAL

PETITIONER

V

RONNY SHAVER

RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI TO

CALIFORNIA COURT OF APPEALS FOURTH

APPELLATE DISTRICT DIVISION THREE

PETITION FOR REHEARING

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The Petitioner herein respectfully moves this Court for an order (1) vacating its denial of the petition for writ of Certiorari, entered on March 22, 2010, and (2) granting the petition As for this request, petitioner states the following

1 GROUNDS FOR REHEARING

(1) This Rehearing is made on the grounds that other substantial grounds not previously presented

(a) QUESTION PRESENTED

(1) Whether a recovering drug addict who is the sole

proprietor automotive mechanic violated the Americans with disabilities Act of 1990 and its' Amendment, when he entered into an oral contract to remove the V-12 engine from the car and replace the oil filter head housing, a strenuous job compared to high school extracurricular activities without being conspicuous with respect to his physical and mental disability from using illegal and prescription narcotic drugs, a Recovering illegal drug addict

(2) Whether a Recovering drug addict who is the sole proprietor is a qualified automotive mechanic under the Americans with Disabilities Act of 1990 and its' Amendment while currently using illegal narcotic more specifically cocaine, showing visual effects of ACROMEGALY DISEASE (long mandible

and hands) And a metal disposition of morbid apathy where there is a absence of or an indifference to reason

[DOCID f publ 325 110]
[[Page 122 STAT 3553]]
Public Law 110-325
110th Congress

An Act

To restore the intent and protections of the Americans with Disabilities Act of 1990 <<NOTE Sept 25, 2008-[S 3406]>>

Be it enacted by the Senate and House of Representatives of United States of America in Congress <<NOTE ADA Amendments Act of sec 1 Short Title

This act may be cited as the "ADA" Amendments Act of 2008" sec 2 <<NOTE 42 USC 12101 note>>

FINDING AND PURPOSES

(a)Finding –Congress finds that—

(1) in enacting the Americans with Disabilities Act of 1990 (ADA), Congress intended that the Act "provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities" and provide broad coverage,

(2) in enacting the ADA, Congress recognized that physical and mental disabilities in no way diminish a person's right to fully participate in all aspects of society, but that people with physical or mental disabilities are frequently precluded from doing so because of prejudice, antiquated attitudes, or the failure to remove societal and institutional barriers,

(3) while congress expect that the definition of disability under the ADA, would be interpreted consistently with how courts had applied the definition of a handicap individual under the Rehabilitation Act of 1973, that expectation has not been fulfilled,

(4) The holding of the U S. Supreme Court in Sutton v United Air Lines, Inc , 527 U S 471 (1999) and its companion cases have narrowed the broad scope of protection intended to afforded by ADA, thus eliminating protection for many individuals whom Congress intended to protect,

(5) The holding of the U S. Supreme Court in Toyota Motor Manufacturing, Kentucky, Inc v Williams, 534 U S 184 (2002), further narrowed the broad scope of protection intended to be afforded by ADA,

(6) As a result of these U.S Supreme Court cases, lower courts have incorrectly found in individual

cases that people with a range of substantially limiting impairments are not people with disabilities (7) In particular, the U.S Supreme Court, in the case of Toyota Motor Manufacturing, Kentucky, Inc , v Williams, 534 U S 184 (2002), interpreted the term "substantially limits" to require a greater degree of limitation than was intended by Congress

(b) Purposes -- The purposes of this Act are—
(1) To carry out the ADA's objectives of providing "a clear and comprehensive national mandate for elimination of discrimination" and "clear, strong, consistent, enforceable standards addressing discrimination "by reinstating a broad scope of protection to be available under ADA,

(2) To reject the requirement enunciated by the U S. Supreme Court in Sutton v United Air Lines, Inc , 527 U S 471 (1999) and its companion cases that whether an impairment substantially limits a major life activity is to be determined with reference to ameliorative effects of mitigating measures,

(3) To reject the U S Supreme Court's reasoning in Sutton v United Air Lines, Inc , 527 U S 471 (1999) with regard to coverage under the third prong of the definition of disability and to reinstate the reasoning of the U S Supreme Court in School Board of Nassau County v Arline , 480 U S 273 (1987) which set forth a broad view of the third prong of definition of handicap under the Rehabilitation Act of 1973,

(4) To reject the standards enunciated by the U.S Supreme Court in Toyota Motor manufacturing , Kentucky, Inc , v Williams, 534 U S 184 (2002), that the terms "substantially" and "major" in the definition of disability under the ADA "need to be interpreted strictly to create a demanding standard for qualifying as disabled, "and that to be substantially limited in performing a major life activity under ADA "an individual must have an impairment that prevents or severely restrict the individual from doing activities that are of central importance to most people's daily lives",

(5) To convey congressional intent that the standard created by the U S. Supreme in the of Toyota Motor Manufacturing, Kentucky, Inc v Williams, 534 U S 184 (2002) for "substantially limits" and applied by lower courts in numerous decisions, has created an inappropriately high level of limitation necessary to obtain coverage under the ADA, to covey that it is the intent of Congress that the primary object of attention in cases brought under the ADA should be whether entities covered under the ADA, have complied with their obligations, and to convey that the question of whether an individual's impairment is a disability under the ADA should not demand extensive analysis, and

(6) To express Congress expectation that the Equal Employment Opportunity Commission will revise

that portion of its current regulations that defines the term "substantially limits" as "significantly restricted" to be consistent with this Act, including the amendments made by this Act

Sec 3 CODIFIED FINDINGS
Section 2(a) of the American with Disabilities Act of 1990 (42 U S C 12101 is amended—
(1) By amending paragraph 91) to read as follows
"(1) physical or mental disabilities in no way diminish a person's right to fully participate in all aspects of society,
Page 122 Stat 3555]
Yet many people with physical or mental disabilities have been precluded from doing so because of discrimination, others who have a record of a disability or are regarded as having a disability also have subjected to discrimination,"
(2) By striking paragraph (7), and
(3) by re designating paragraphs (8) and (9) as paragraphs (7) and (8), respectively

Sec 4 DISABILITY DEFINED AND RULES OF CONSTRUCTION
(a) Definition of Disability –section 3 of the Americans with Disabilities Act of 1990 (42 U S C 12102) is amended to read as follows
SEC 3 DEFINITION OF DISABILITY
"As used in this Act
"(1) Disability —The term disability means, with respect to individual—

"(A) a physical or mental impairment that substantially limits one or more major life activities of such individual,

"(B) a record of such an impairment, or

"(C) being regarded as having such an impairment (as described in paragraph (3)

"(2) Major life activities —

"(A) In general —for purposes of paragraph (1), major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working

"(B) Major bodily functions —for purposes of paragraph(1) a major life activity also includes the limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions

"(3) Regarded as having such an impairment –For purposed of paragraph (1)(C)

"(A) An individual meets the requirement of being regarded as having such an impairment if the individual establishes that he or she has been subjected to an action prohibited under this Act because of an actual or perceived physical or mental impairment limits or is perceived to limit a major life activity

"(B) Paragraph (1)(C) shall not apply to impairments that are transitory and minor A transitory

impairment is an impairment with an actual or expected duration of 6 months or less
"(4) Rules of construction regarding the definition of shall be construed in accordance with the following
"(A) The definition of disability in this Act shall be construed in favor of broad coverage of individuals under this Act, to the maximum extent permitted by the terms of this Act
"(B) the term substantially limits shall be interpreted consistently with the findings and purposes of the ADA Amendments Act of 2008
Page 122 Stat 3556]
"(C) An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability
"(D) an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active
"(E)(i) The determination of whether an impairment substantially limits a major life activity shall be made without regarded to the ameliorative effects of mitigating measures such as—
"(I) medication, medical supplies, equipment, or appliances, low-vision devices (which do not include ordinary eyeglass or contact lenses), prosthetics including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies,
"(II) use of assistive technology,
"(III) Reasonable accommodations or auxiliary aids

or services, or
"(IV) learned behavioral or adaptive neurological modifications
"(ii) The ameliorative effects of the mitigating measures of ordinary eyeglasses or contact lenses shall be considered in determining whether an impairment substantially limits a major life activity
"(iii) as used in this subparagraph—
"(I) the term ordinary eyeglasses or contact lenses means lenses that are intended to fully correct visual acuity or eliminate refractive error, and
"(II) the term low-vision devices means devices that magnify, enhance or otherwise augment a visual image."
(b) conforming Amendment.—the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et. seq.) is further amended by adding after section 3 the following
"Sec. <<NOTE 42 USC 12103.>> 4. ADDITIONAL DEFINITION
"As used in this Act
"(1) Auxiliary aids and services.—the term auxiliary aids and services includes—
"(A) qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments,
"(B) qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments,
"(C) acquisition or modification of equipment or devices, and

"(D) other similar services and actions
"(2) state —the term State means each of the several states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands of the United States, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana islands "
(c) amendment to the Table of Contents —The table of contents contained in section 1(b) of the Americans with Disabilities
Page 122 Stat 3557
Act of 1990 is amended by striking the item relating to section 3 and inserting the following items
"Sec 3 Definition of disability
"Sec 4 Additional definitions "
Sec 5 DISCRIMINATION ON THE BASIS OF DISABILITY
(a) On the basis of disability —section 102 f the American with Disabilities Act of 1990 (42 U S C 12112) is amended—
(1) In subsection (a), by striking "with a disability because of the disability of such individual" and inserting "on the disability", and
(2) In subsection (b) in the matter preceding paragraph (1), by strike "discriminate" and inserting "discriminate against a qualified individual on the basis of disability"
(b) Qualification standards and Tests Related to Uncorrected vision —Section 103 of the Americas Disabilities Act of 1990 (42 U S C 12113 is amended by re designating subsections (c) and (d) as

subsections (d) and (e), respectively, and inserting after subsection
(b) the following new subsection
"(c) Qualification Standard and Tests related to uncorrected vision —Notwithstanding section 3(4)(E)(ii), covered entity shall not use qualification standards, employment tests, or other selection criteria based on an individual's uncorrected vision unless the standard, test, or other selection criteria as used by the covered entity is shown to be job related for the position in question and consistent with business necessity "
(c) Conforming Amendments —
(1) Section 101(8) of the Americans with Disabilities Act of 1990 (42 U S C 12111(8) is amended—
(A) in the paragraph heading by striking "with a disability", and
(B) by striking "with a disability" after "individual" both places it appears
(2) Section 104(a) is amended by striking "the term qualified individual with disability "shall" and inserting "a qualified individual with a disability shall"
Sec 6 RULES OF CONSTRUCTION
(a) Title V of the Americans with Disabilities Act of 1990 (42 U S C 12201>> the following
"(e) Benefits Under State Worker's Compensation Laws —Nothing in this Act Alters the standards for determining eligibility for benefits under state worker's compensation laws or under State and Federal disability benefit programs
"(f) Fundamental Alteration —Nothing in this Act alters the provision of section 302(b)(2)(A)(ii), specifying that reasonable modifications in policies, or procedures shall be required, unless an entity can demonstrate that that

making such modification s in policies, practices, or procedures, including academic requirements in postsecondary education, would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations involved
"(g) Claims of No disability —Nothing in this Act shall provide the basis for a claim by an individual without a disability
[Page 122 Stat 3558]
That the individual was subject to discrimination because of the individual's lack of disability
"(h) Reasonable Accommodations and Modifications —A covered entity under Title I a public entity under Title II and any person who owns leases (or leases to) or operates a place or public accommodation under Title III need not provide a reasonable accommodation or a reasonable modification to policies practice or procedure to an individual who meets the definition of disability in section 3(1) solely under subparagraph (C) of such section "
(2)<<NOTE 42 USC 12206-12211, 29 USC 706 42 USC 12212, 12213 >> by re designating section 506 through 514 as sections 507 through 515, respectively and adding after section 505 the following
"Sec 506 <<NOTE 42 USC 12205a >> RULE OF CONSTRUCTION REGARDING REGULATORY AUTHORITY
"The authority to issue regulations granted to the Equal Employment Opportunity Commission, the Attorney General , and the Secretary Of Transportation under this Act includes the authority to issue regulations implementing the definitions of disability in section 3 including rules of the construction) and ADA of 2008 ",
"(3) <<NOTE 42USC 12210 >> in section 511 (as re

designated by paragraph (c) by
(b) the table of contents contained in section 1(b) of the Americans with Disabilities Act of 1990 is amended by re designating the terms relation to sections 507 through 515, respectively and by inserting after the item relating to section 505 the following new items
"Sec 506 Rule of Construction regarding Authority "
SEC 7 CONFORMING AMENDMENTS
Section 7 of the rehabilitation Act of 1973 (29 U S C 705) is amended—
(1) In paragraph (9)(B), by Striking "a physical" and all that follows through "major life activities" and inserting "the meaning given it in section 3 of the Americans with Disabilities Act of 1990 (42 U S C 12102)" ND
(2) In paragraph (20)(B) by striking "any person who" and all that follows through the period at the end and inserting "any person who has a disability as defined in section 3 of the Americans with Disabilities Act of 1990 (42 U S C 12102) "
[Page 122 Stat 3559]
SEC 8 <<NOTE 29 USC 705 note >> Effective Date
This Act and amendments made by this Act shall become effective on January 1, 2009
Approved September 25, 2008
LEGISLATIVE HISTORY—S 3406
CONGRESSIONAL RECORD, VOL 154 (2008)
Sept 11, consideration and passed senate
Sept 17, considered and passed house

AMERICANS WITH DISABILITIES ACT OF 1990
From Wikipedia, the free encyclopedia

The American with Disability Act of 1990 (ADA) is the short title of the United States (Pub L 101-336, 104 Stat

327, enacted July 26, 1990), codified at 42 U S C sec 12101 et seq It was signed into law on July 26, 1990, by President George H Bush, and later amended with changes effective January 1, 2009 The ADA is a wide ranging civil rights law that prohibits, under certain circumstances, discrimination based on disability It affords similar protections against discrimination to Americans with disabilities as the civil rights Act of 1964, which made discrimination based on race, religion, sex, national origin, and other characteristic illegal Disability is defined as "a physical or mental impairment that substantially limits a major life activity "the determination of whether any particular condition is considered a disability is made on a case by case basis Certain specific conditions are excluded as disabilities, such as current substance abuse and visual impairment which is correctable by prescription lenses On September 25, 2008 president George W Bush signed into law the ADA Amendments Act of 2008 (ADAAA) It is intended to give broader protections for disabled workers and turn back the clock on court rulings which Congress deemed too restrictive The ADAAA includes a list of impairments to major life activities

EMPLOYMENT, SERVICES AND ACCOMMODATIONS
Title I Employment 42 USC sec 12111-12117
The ADA states that a covered entity shall not discriminate against a qualified individual with a disability This applies to job application procedures, hiring, advancement and discharge of employees, worker's compensation, job training, and other terms, conditions, and privileges of employment Covered entity can refer to an employment agency, labor organization, or joint labor management committee, and is generally an

employer engaged in interstate commerce and having or more workers Discrimination may include, among other things, limiting or classifying a job applicant or employee in an adverse way, denying employment opportunities to people who are truly qualify, or not making reasonable accommodation to the known physical or mental limitations of disabled employees, not advancing employees with disabilities in the business, and/or not providing needed accommodations in training Employers can use medical entrance examinations for applicants, after making the job offer, only if all applicants (regardless of disability) must take it and it is treated as confidential medical record Qualified individual do not include any employee or applicant who is currently engaging in the illegal use of drugs when that usage is the basis for the employers' actions

Retrieved from
http //en wikipedia org/wiki/Americans with Disabilities Act of 1990

ARGUMENT SUMMARIZED

Respondent's character, has caused him to become not protected under The Americans with Disabilities Act of 1990 and its' Amendment, because he is not a qualified individual as a automotive mechanic Specifically Respondent is a Recovering Drug Addict

who has had a relapse and is now using the illegal narcotic drug cocaine, heroin, LSD, and the prescription narcotic drugs methadone used to treat his illegal narcotic drug addiction

Proof Respondent is showing visual effects from using the illegal narcotic drugs cocaine, more specific "ACROMEGALY DISEASE" (long mandible and hands) Petitioner motion for drug test so as to verify Respondent's addiction to illegal drugs was denied the cited there was no authority for the motion and illegal narcotic drug addiction is not relevant

The Act has provided a broad range of coverage For a individual with disability, the court not giving Respondent the disability of being a Recovering drug addict is discrimination, because Congress recognize

that physical and mental disabilities in no way diminish a person's right to participate in all aspects of society Respondent participates as a Automotive Repair Mechanic, with a disability of Recovering drug addict, showing visual effects of a relapse by using cocaine identified by ACROMEGALY DISEASE (long mandible and hands) Respondent also has other disabilities physiological skin disease

Conflict Between the U S Supreme Court and California Court of Appeals fourth Appellate District Division Three

The holding of the Supreme Court in Sutton v United Air Lines, Inc , 527 U S 471 (1999) and its companion cases have narrowed the broad scope of protection intended to be afforded by ADA, thus

eliminating protection for many individuals whom Congress intended to protect

As a result of these Supreme Court cases, lower Courts have incorrectly found in individual cases that people with a range of substantially limiting impairments are not people with disabilities

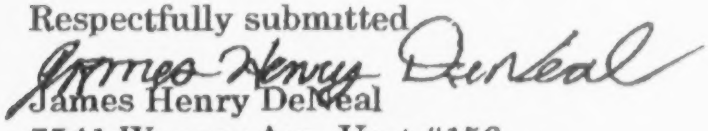
The lower Court in California a poppy state because illegal and prescription narcotic drug addiction is at an epidemic, are also in conflict with The U S Supreme Court holdings that urinalysis drug testing held do not violate federal constitution's fourth amendment, in the Case No 01 – 332 Board Of Education Of Independent School District No 92 Of Pottawatomie County, et al , Petitioner Vs Lindsay Earls et al Respondent 27-June-2002, Argued March 19, 2002

DECISION Public School District's Subjection of all students participating in District's competitive extracurricular activities to urinalysis drug testing held not to violate federal constitution fourth amendment [536 US--,153 L Ed 2d 735,122 S Ct 2559]

CONCLUSION

For the reasons set forth above, as well as those contained in the petition for certiorari, petitioner prays that this Court grant rehearing of the order of denial, vacate that order, grant the petition and review the judgment and opinion below

Respectfully submitted



James Henry DeNeal
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April 5, 2010

CERTIFICATE OF COUNSEL

As counsel for the petitioner, I hereby certify that this petition for rehearing is presented in good faith and not for delay and is restricted to the grounds specified in Rule 44 2

/s/ James Henry Percival 4-7-10
Counsel for Petitioner